

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: August 31, 1992  
CASE NO. **82-CTA-334**

IN THE MATTER OF

U.S. DEPARTMENT OF LABOR,

**v.**

BERGEN COUNTY, NEW JERSEY, CETA.

BEFORE: THE SECRETARY OF LABOR

ORDER DENYING REQUEST FOR HEARING.

This matter is before me pursuant to the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V **1981**), <sup>1/</sup> and its implementing regulations, 20 C.F.R. Parts **675-680** (1990). By letter dated June 23, 1992, the grantee, Bergen County, filed a request for hearing to establish a record demonstrating that it has been prejudiced by the delay in issuing the March 13, 1992, Final Decision and Order (F.D. and O.) in this matter. <sup>2/</sup>

Citing City of Camden, New Jersey v. United States Department of Labor, 831 F.2d 449 (3d Cir. **1987**), the grantee alleges that the Third Circuit has indicated it will consider

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<sup>1/</sup> CETA was repealed effective October 12, 1982. The replacement statute, the Job Training Partnership Act, 29 U.S.C. §§ 1501-1791 (**1988**), provides that pending proceedings under CETA are not affected. 29 U.S.C. § 1591(e).

<sup>2/</sup> This case is currently on appeal to the United States Court of Appeals for the Third Circuit. The court has granted a stay while the grantee pursues the instant request for hearing.

whether a grantee has been prejudiced by the Secretary's delay in rendering a decision. The grantee contends that the Administrative Procedure Act (APA) entitles it to an agency hearing on this issue. Request for Hearing at 1, 2.

In Panhandle Cooperative Association v. E.P.A., 771 F.2d 1149, 1152 (8th Cir. 1985), referred to in City of Camden and discussed in the grantee's request, the court noted that there was no record on the issue of delay because Panhandle "never raised the delay issue before the EPA, either while the decision was pending or after it was **released.**" (emphasis added). The emphasized language in Panhandle was based on an EPA regulation which allows motions to reconsider a final order if filed within ten days after the order is served. See 40 C.F.R. § 22.32 (1984).

Bergen County's June 23 request for hearing in this case is tantamount to a motion for reconsideration in that its ultimate purpose is to obtain a modification of the final order. Neither the CETA nor the implementing regulations, however, specifically provides for reconsideration by the Secretary. In this situation, it is appropriate to look to the Federal Rules of Civil Procedure for guidance. United States Department of Labor v. Utah Rural Development Corporation, Case No. 83-CTA-211, Sec. Ord., Oct. 15, 1986, slip op. at 1-2. Under Rule 59(e), a motion to alter or amend a judgment must be filed not later than 10 days after entry of the judgment. The instant request, received on June 24, is well beyond the time frame for seeking

reconsideration of the March 13 F.D. and O. Accordingly, the request for hearing is denied. Moreover, for the following reasons, had the request been timely filed, I would deny it on substantive grounds.

Before an action may be set aside under the **APA** for lack of punctuality, the aggrieved party must show that it was prejudiced by the delay. City of Camden, 831 **F.2d** at 451; Panhandle, 771 **F.2d** at 1153. City of Camden also involved a six-year period between the **ALJ's** decision and the Secretary's final order and Camden objected to repaying over \$170,000 due to changed "financial condition during the time lapse." 831 **F.2d** at 450. In refusing to "overturn the repayment order based on the **six-** year delay," id. at 451, the court of appeals specifically noted that

[Camden] ha[d] not demonstrated that the delay prejudiced its ability to defend the merits of its Position. It can be said that [Camden] actually benefitted from the delay. The City was able to postpone its repayment and thereby gain use of the disputed monies for an additional six years.

Id. (emphasis added). As the Grant Officer argues, Opposition to Request for Hearing at 4-6, the grantee here has not demonstrated, or even alleged, how the delay has prejudiced its presentation of this case. The grantee's general claim of prejudice is without merit because the case was accepted for review within one month of when the **ALJ's** decision was issued and all parties had the opportunity to address the issues. The grantee notified the Secretary in November of 1985, after having

been granted a stay of the appeal to the Secretary, that despite additional allowed time to search for records, the grantee was "unable to provide any other documentation at this **time.**" Letter of Peter J. Scandariato dated November 26, 1985. The grantee, therefore, has already been given an additional opportunity to defend the merits of its position and cannot legitimately claim prejudice due to the delay in issuing the decision. See City of Camden, 831 F.2d at 451. Moreover, the record is barren of any suggestion that the grantee at any time complained about the pace of the proceedings in this case. F.T.C. v. J. Weinaarten, Inc., 336 F.2d 687, 691 (5th Cir. 1964), cert. denied, 380 U.S. 908 (1965). Accordingly, there is no basis for holding a hearing.

ORDER

The grantee's request for hearing is denied as untimely. Had the request been timely submitted, for the foregoing reasons, I would have found it to be without merit.

SO ORDERED.

  
Secretary of Labor

Washington, D.C.

**CERTIFICATE OF SERVICE**

Case Name: In the Matter of U.S. Department of Labor v.  
Bergen County, New Jersey, CETA

Case No. : **82-CTA-334**

Document : Order Denying Request for Hearing

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